

BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C.

RANDALL EHRLICH,

Complainant,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Docket No.: C2020-1

RESPONSE TO USPS'S ANSWERS TO  
CHAIRMAN INFORMATION REQUEST  
NO. 2

Complainant **RANDALL EHRLICH**, through attorney of record **ADAM P. KARP** of **ANIMAL LAW OFFICES**, responds to USPS's answer to Chairman Information Request No. 2 ("ChIR No. 2"). In addition to the *Complaint*, the *Second Ehrlich Declaration*, the *Ehrlich Declaration* filed in C2019-1, the *Karp* and *Lucas Declarations* filed in C2019-1, and the *Third Ehrlich Declaration* of February 24, 2020, he offers the following argument.

**Hearsay Objection**

A motion to dismiss looks only to the challenged pleading (here, *Complaint*), assumes all well-pleaded allegations to be verities, and does not proffer evidence. However, USPS has seen fit to attach a declaration and numerous exhibits, thereby converting the motion into one tantamount

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ANIMAL LAW OFFICES OF  
**ADAM P. KARP, ESQ.**  
114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225  
(888) 430-0001 • Facsimile: (833) 878-6835  
adam@animal-lawyer.com

1 to summary judgment.<sup>1</sup> In so doing, however, it fails to provide admissible evidence as required  
2 by FRCP 56, to the extent the PRC applies it.<sup>2</sup> Mr. Ehrlich makes this objection to highlight the  
3 error overruling it would invite, putting aside that the very exhibits submitted in response to the  
4 ChIR No. 2 impeach Bell's declaration. No statements as to what Voisine allegedly told Bell's  
5 predecessor (i.e., hearsay within hearsay within hearsay) should be admitted or considered by the  
6 PRC, particularly if not under penalty of perjury. Those statements include paragraphs 4-7 and 16  
7 concerning alleged reports of a different dog on a different block and different street, a claim that  
8 a "large, aggressive German shepherd had pushed open the screen door at 5833 7<sup>th</sup> Avenue on  
9 August 8, and July 18, 2015," and the implication that Mr. Ehrlich's dog was off-leash and attacked  
10 Voisine, when Attachment 1 to Exh. A of the *Bell Declaration* says nothing of the sort and no  
11 other admissible evidence supports such canard.

### 12 **Misstatements by USPS Further Sully a Facially Deficient Motion to Dismiss**

13 USPS references an OSHA complaint of February 15, 2017, assigned number 1095957.  
14 On superficial reading, it is evident that not only does the complaint not identify Mr. Ehrlich, but  
15 the alleged interactions with a loose dog occurred on a different block and a different street with  
16 no evidence that the dog belonged to Mr. Ehrlich.

17  
18 • Exhibit 1 to ChIR No. 2, a letter of May 27, 2016 from OSHA to former BPA Manager  
19 John Smith actually declines to conduct any investigation.  
20

21  
22 <sup>1</sup> FRCP 12(d).

23 <sup>2</sup> 39 CFR 3001.21(a) does not indicate what standard of review applies to a motion to dismiss, or whether FRCP 12  
24 and 56 have any bearing. FRCP 56(c)(4) requires that affidavits or declarations be made on personal knowledge setting  
25 out facts that would be admissible in evidence.

**RESPONSE TO USPS ANSWERS TO  
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ANIMAL LAW OFFICES OF  
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1       • Exhibit 2 to ChIR No. 2, Smith’s June 6, 2016 response to OSHA references 5622 8<sup>th</sup> Ave.  
2 NW while Mr. Ehrlich lives at 5833 7<sup>th</sup> Ave. NW and otherwise provides no new evidence except  
3 a vague claim by “the regular carrier” that in August 2015 a dog threatened her. Of note is that on  
4 May 10, 2016, this letter states, “[T]he carrier was told resume (sic) delivering the mail for this  
5 address since the dog hazard no longer existed.... No dog has been seen at this address.”

6       • Exhibit 3 to ChIR No. 2, a letter from OSHA to Bell dated February 15, 2017, indicates  
7 that OSHA again has no intention of investigating.

8       • Exhibit 4 to ChIR No. 2, Bell’s February 22, 2017 response to OSHA states that animal  
9 control was allegedly notified but declined to pursue because “the dog was confined to the  
10 residence.” Importantly, Mr. Ehrlich refused to sign a Dog Control Agreement Letter, which was  
11 his right because he did not agree with the false allegations. As a result, BPA terminated his mail  
12 in a stroke of retaliation and undermined any concept of due process. This letter mentions no other  
13 “incident” beyond August 2015.

14       • Exhibit 5 to ChIR No. 2, a July 13, 2016 letter from OSHA to Smith, issues no citation for  
15 the alleged hazard at 5622 8<sup>th</sup> St. (remember, Mr. Ehrlich lives at 5833 7<sup>th</sup> Ave. NW), but makes  
16 claims of “seven documented unleashed dog sightings and a claim that the resident has “several  
17 dogs one of which bit a carrier in August 2015.”

18       Of concern is the evolving tale told to OSHA, beginning with Voisine’s unsworn complaint  
19 of August 8, 2015 (Att. 1 to *Bell Declaration*), alleging no misconduct whatsoever but simply that,  
20 “Door was open again. Dog is behind screen and baby gate.” Voisine did not check any box for  
21 “Dog attacked and attempted to bite” or “Exhibited threatening behavior” or “Was Loose.” This

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24 **RESPONSE TO USPS ANSWERS TO**  
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1 non-complaint is falsely transformed by Smith into “threaten[ing]” the carrier [Exhibit 2 to ChIR  
2 No. 2] to then “bit[ing].” Bell then signs a declaration, with no personal knowledge whatsoever,  
3 further dressing up the initial complaint in the garb of falsification by claiming the dog “pushed  
4 open the screen door at 5833 7<sup>th</sup> Ave. on August 8, 2015” (*Bell Decl.*, ¶ 7) when the very document  
5 he references says nothing of the sort. Bell’s declaration also strongly implies that in August 2015,  
6 Mr. Ehrlich’s dog was “off-leash and attacked the letter carrier assigned to the route,” without an  
7 iota of evidence to support the accusation or even attaching a single letter or report from Voisine  
8 making such claim. *Id.* It is precisely this type of evolving exaggeration, furthered by former and  
9 current managers (Smith and Bell), that leaves Mr. Ehrlich and other postal customers in the BPA  
10 service area lacking all confidence in the USPS’s ability to ensure honest and fair delivery of the  
11 mail and showcases the real risk of erroneous deprivation owing to lack of due process, upon which  
12 the PRC is thankfully focused.

### 14 **District Policy Mooted for Years**

15 No threat, much less an imminent one, exists at Mr. Ehrlich’s front door. Any alleged  
16 concerns were “corrected” in 2015, making the policy inapposite and its continued adverse  
17 application violative of § 403(c). Mr. Ehrlich has gone above and beyond any reasonable  
18 expectation of a postal customer wrongly accused by a rogue carrier. The dog who allegedly scared  
19 Voisine but never once left Mr. Ehrlich’s house and was, by her own notes, restrained behind a  
20 gate and closed screen door while Mr. Ehrlich was present and supervising, vacated the premises  
21 by end of July 2015, over four and a half years ago. The alleged August 8, 2015 “incident” involved  
22 no threat at all, and, regardless, the dog then living on premises also vacated in November 2015.

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Though the “imminence” of alleged “interference” had vanished, USPS maintained its stubborn refusal to deliver his mail. So, in desperation, Mr. Ehrlich moved his box from the porch at which he had reliably received mail for over a decade, to over twenty (20’) feet from the porch on the fenceline as depicted in the *Third Ehrlich Decl.* After installing it, he was then told that he had to move it to a fence post closer to the sidewalk. The next post is at the sidewalk, precisely the spot to which Mr. Ehrlich reasonably refused to relocate due to fears of theft. The present fence box location was at least twenty feet from his front door and within line of sight of the street, and thereby satisfied any district concerns, yet, without just basis, he continued not to get mail.

## Conclusion

Mr. Ehrlich asks the PRC to deny USPS's motion, order resumption of delivery to his porch mailbox, and strongly admonish BPA and Voisine to cease its unreasonable, discriminatory conduct by taking all steps reasonable and necessary to effectuate unimpeded, respectful mail service to his door. Mr. Ehrlich asks that this matter remain open and under PRC jurisdiction for at least twelve (12) months to ensure continued monitoring of such order. The PRC is also requested to declare inherently, unreasonably discriminatory and contrary to § 403(c) the District Policy that, "[O]nce an address has their mail stopped due to a dog issue, as long as the resident stays at that address the non-delivery will continue," as stated by Bell to McNeal on May 24, 2017 (Exh. 7 to ChIR No. 2).

Dated this February 24, 2020.

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## RESPONSE TO USPS ANSWERS TO CHIR 2 - 5

ANIMAL LAW OFFICES OF  
ADAM P. KARP, ESQ.

114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225  
(888) 430-0001 • Facsimile: (833) 878-6835  
adam@animal-lawyer.com

1 Adam P. Karp, WSB No. 28622  
2 Attorney for Complainant Ehrlich  
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